

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

MARVIN MITCHELL and MARLENE MITCHELL,

Appellants,

vs.

CHARLES L. SMITH,

Appellee.

No. 4:04-cv-40160

O R D E R

This matter is before the Court on Appellants' motion for leave to appeal (Clerk's No. 1). The appeal seeks reversal of several orders issued by the bankruptcy court regarding management of discovery. Attorney for Appellants is David L. Leitner; representing himself as Appellee is Charles L. Smith. An oral hearing was not requested on the motion, and the Court finds a hearing is unnecessary as both parties have sufficiently briefed the matter. Thus, the Court finds the motion for leave to appeal is fully submitted and ready for ruling.

PROCEDURAL HISTORY¹

Appellants, Marvin Mitchell and Marlene Mitchell ("the Mitchells" or "the Debtors"), commenced this appeal against Appellee, Charles L. Smith, Chapter 7

¹ The procedural history from the bankruptcy court dealing with discovery issues will be laid out by the Court as part of the Background Facts section, as it is substantively relevant to the issues presented in Appellants' motion.

Trustee (“Smith” or “Trustee”), in this court on March 18, 2004, by filing a motion for leave to appeal. The Court has jurisdiction to hear this type of appeal pursuant to 28 U.S.C. § 158, as this is an interlocutory appeal from a ruling of the bankruptcy court within this judicial district. 28 U.S.C. § 158(3).

BACKGROUND FACTS

The underlying bankruptcy action was commenced on March 5, 2002. Trustee initiated the adversary proceeding by a complaint filed February 13, 2003. In his complaint, Trustee objected to Marvin and Marlene Mitchell’s discharge in the bankruptcy action. On April 11, 2003, attorney John F. Sprole,² on behalf of the Mitchells, answered the complaint, denying each allegation made by Trustee.

On June 12, 2003, attorney Dallas J. Janssen filed an appearance of counsel on behalf of the Debtors in the adversary proceeding. Mr. Janssen was the Debtors’ fourth attorney in the bankruptcy proceeding. On June 23, 2003, the bankruptcy court filed a stipulated scheduling order. This order was signed by the court, by Mr. Janssen on behalf of the Mitchells, and by Smith as the Trustee. The order stated

² Mr. Sprole was the Mitchells’ third attorney in the bankruptcy proceeding. The Debtors were originally represented by attorney John Scott of Louisiana, as the bankruptcy action was originally filed in Louisiana before being transferred to the Southern District of Iowa. On June 14, 2002, attorney Jerold Wanek of Des Moines appeared on behalf of the Mitchells. He was replaced on November 18, 2002, by Mr. Sprole. The Debtors have been represented by two attorneys since Mr. Sprole, as is explained forthwith.

that “[d]iscovery shall be closed on December 1, 2003,” and “[d]ispositive motions shall be filed by December 15, 2003.”

On July 10, 2003, Trustee received interrogatories and requests for production from the Debtors. Trustee timely served his discovery responses on Mr. Janssen on August 8, 2003. Appellants contend his responses contained a plethora of objections and were incomplete and evasive.

As of December 1, 2003, the Debtors were still represented by Mr. Janssen. On December 11, 2003, however, attorney David L. Leitner became the Mitchells’ fifth attorney in the bankruptcy proceedings when he filed an appearance of counsel on behalf of the Debtors. Mr. Janssen filed his application to withdraw on January 5, 2004.

The Debtors made a request for additional discovery on December 12, 2003, nearly two weeks after the discovery deadline set by the bankruptcy court’s June 23 order. This request was made when, as soon as he became involved in the matter, the Debtors’ latest counsel wrote to Trustee requesting additional information. The faxed request sought full responses to the discovery previously promulgated. Trustee responded on December 18, 2003, refusing to comply.

The Debtors, accompanied by counsel, met with Trustee at his office in Council Bluffs on December 23, 2003, in an attempt to resolve the dispute without court intervention. This attempt was unsuccessful. On December 24, 2003, the

Debtors filed a motion for extension of time in which they asked the bankruptcy court to extend the discovery deadline for 90 days. Trustee objected to this motion, arguing the discovery deadline passed on December 1, 2003, and that the Debtors were given ample opportunity to participate in the discovery process. The bankruptcy court entered an order on January 15, 2004, denying the requested extension of the discovery deadline.³

On December 24, 2003, the Debtors filed a motion to compel discovery. Again, Trustee objected to this motion, arguing that discovery closed on December 1, 2003. On February 20, 2004, the bankruptcy court entered an order denying the Debtors' motion to compel discovery. The court advised Trustee he could submit a fee application but that the Debtors would have an opportunity to object. On February 24, 2004, Trustee filed a motion for costs and fees incurred in opposing the motion to compel. To date, the Debtors have not made any objections to Trustee's motion for fees, nor has the bankruptcy court ruled on that motion.⁴

³ No appeal was taken from the January 15 order until the present interlocutory appeal was made by the Mitchells. This has some significance which will be discussed infra, at section A.

⁴ The Bankruptcy Court halted proceedings on the matter in light of the appeal, so the Debtors are in this Court seeking review of a determination they prevented from occurring.

On January 15, 2004, Trustee sent copies of all the documents he had in his possession except those that could be easily obtained from other sources⁵ to the Debtors' counsel. This was in addition to the responses he originally provided the Debtors in August of 2003, and apparently an attempt to fulfill the Debtors' latest discovery request.

On February 26, 2004, the Mitchells filed their notice of appeal and motion for leave to appeal. They posit in their brief on the appeal that the issues are whether the bankruptcy court abused its discretion in denying their motion to extend discovery deadlines and their motion to compel discovery as well as the bankruptcy court's decision awarding fees to Trustee.⁶

ANALYSIS

A. Issues on Appeal

As an initial matter, the Court must determine which of the issues asserted by Appellants are properly before this Court. In their appeal, the Mitchells contend the issues are whether the bankruptcy court abused its discretion in denying their motions to extend discovery deadlines and to compel discovery and in awarding fees to Trustee. Meanwhile, Trustee states the only possible issue allowed in this appeal is

⁵ For example, pleadings, transcripts, and documents filed with the Secretary of State were not sent to the Mitchells' attorney.

⁶ Appellee raises the issue as to whether all of these issues are actually properly before the Court. This will be discussed as an initial matter, *infra*, at section A.

whether the bankruptcy court abused its discretion in denying Appellants' motion to compel discovery. He contends the other issues asserted by Appellants are not properly before this Court.

Trustee contends the issue of whether the bankruptcy court abused its discretion in issuing the order denying the motion to extend time for discovery is not properly before the Court as the Debtors failed to timely appeal from this decision. In addition, Trustee contends the issue of whether the bankruptcy court abused its discretion in awarding fees to Trustee is not properly before the Court as the bankruptcy court has not yet issued such an order.

The order denying the motion to extend time for discovery was filed January 15, 2004, and the Debtors' notice of appeal was not filed until February 26, 2004. Pursuant to Federal Rule of Bankruptcy Procedure 8002(a), a party must file a notice of appeal within 10 days of the filing date of the order being appealed. Obviously, Appellants' notice of appeal was filed well beyond the allowable time. Moreover, the notice of appeal did not even mention the January 15 order as the order/judgment being appealed, listing only the February 20 order denying their motion to compel as the order/judgment being appealed.

Following its ruling on the Debtors' motion to compel, the bankruptcy court did allow Trustee to submit a fee application. The court further stated, however, that it would allow the Debtors an opportunity to object. To date, the Debtors have entered

no objections to the fee application submitted by Trustee on February 24, 2004, nor has this Court been able to find any evidence that the bankruptcy court entered any sort of order related to the issue of fees. As a result, there is currently no order granting Trustee attorney's fees and court costs for defending against the Debtors' motions in the bankruptcy action.

The Court thus concludes that the only appealable issue properly raised is whether the bankruptcy court abused its discretion in its order denying the Debtors' motion to compel. The appeal as to the bankruptcy court's order on the Debtors' motion to extend discovery deadlines is not within the prescribed time period for making such appeals under Rule 8002(a). Consequently, Appellants cannot now raise it as an issue in the present appeal. Likewise, the issue of a fee award by the bankruptcy court is not properly before this Court as there is no order from which the Debtors can appeal on this issue.

B. Entitlement to Interlocutory Appeal

Before even reaching the issue on appeal, Trustee urges the Court to dismiss the appeal, contending the Debtors are not entitled to an interlocutory appeal under the circumstances present here. Smith argues that Appellants failed to comply with Federal Rule of Bankruptcy Procedure 8003(a). Additionally, he argues that the Debtors have failed to demonstrate the exceptional circumstances required for an appellate court to permit an interlocutory appeal.

1. Rule 8003(a) Requirements

Rule 8003(a) requires that a motion for leave to appeal contain the following:

(1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinions or memorandum relating thereto.

Fed. R. Bankr. P. 8003(a). These are not merely formal requirements; rather, a motion in compliance with the rule must be filed. Merchants Bank v. C.R. Davidson Co. (In re C.R. Davidson Co.), 232 B.R. 549, 554 (B.A.P. 2d Cir. 1999) (“We stress . . . that the mandates of Rule 8003 must not henceforth be ignored.”).

Trustee claims that in the present case, Appellants’ motion for leave to amend did not contain a statement of the facts necessary for an understanding of the question to be presented, a statement of the issues, or a statement of the reasons why an appeal should be granted. For example, according to Trustee, Appellants’ motion did not state the discovery deadline, the legal issue to be decided, nor any legal or factual arguments regarding why their appeal should be granted.

Upon a thorough review of the Appellants’ appeal and the record in the case, the Court agrees with Trustee’s contentions. Appellants’ appeal is devoid of many of the necessary Rule 8003 elements for bringing such an appeal. Not only does it lack a statement of facts that allows the Court to understand the questions being presented, but Appellants also fail to put forth any reasons why the appeal should be granted.

2. Exceptional Circumstances

Pursuant to 28 U.S.C. section 158, appeals from interlocutory orders can only be taken with leave of court. 28 U.S.C. § 158(a)(3). It is a stringent standard the movant for an interlocutory appeal must meet, as “[i]n order for an appellate court to permit an interlocutory appeal, the movant must demonstrate that exceptional circumstances exist.” In re Nat’l Metalcraft Corp., 211 B.R. 905, 906 (B.A.P. 8th Cir. 1997) (citing White v. Nix, 43 F.3d 374, 376 (8th Cir. 1994)). Indeed, an appellant must show *all* of the following exceptional circumstances: “(1) refusal would result in wasted litigation and expense; (2) the appeal involves a controlling question of law as to which there is a substantial basis for difference of opinion; and (3) an immediate appeal may materially advance the ultimate termination of the litigation.” In re Popkin & Stern, 226 B.R. 882, 885 (B.A.P. 8th Cir. 1998) (citations omitted); see also In re Nat’l Metalcraft Corp., 211 B.R. at 906.

Trustee maintains that the Debtors are unable to demonstrate these exceptional circumstances in the present case. According to Smith, refusal of the appeal would not result in wasted litigation or expenses nor is there a substantial ground for difference among the courts on the controlling question of law. He further contends that an immediate resolution of the issues would not materially advance the ultimate termination of the litigations; rather, the appeal would only serve to delay the progress of the adversary proceeding.

Again, the Court finds Trustee's assertions are accurate and compelling. Appellants have utterly failed to demonstrate exceptional circumstances for the present appeal beyond the base statement that discovery is a crucial part of the litigation process. While the Court agrees that discovery has become a crucial part of the process, the Court cannot find that the Debtors have been deprived of the *opportunity* to engage in effective and meaningful discovery. Furthermore, this appeal would only serve to slow down the bankruptcy action already in motion and would ultimately do little to materially advance the termination of the action.

3. Designation of Record

Trustee also asserts that the Debtors failed to designate any record for their appeal as required by Bankruptcy Rule 8006. Trustee claims this makes it difficult to respond to most of the Debtors' argument. Consequently, Trustee argues the Debtors' references to contempt proceedings and other matters are not before this Court. Likewise, Trustee points out that the record is silent as to the actual discovery sought and the responses given.

The Court finds Appellants are not entitled to the interlocutory appeal they seek here. Their motion for leave to appeal does not fully comply with the requirements of Rule 8003(a), especially in light of Appellants' failure to designate a record as required by Rule 8006. Based on the record before the Court, it would be difficult to analyze the sufficiency of Trustee's responses to the discovery sought and the bankruptcy

court's ruling on the motion to compel.⁷ Moreover, Appellants have not made a showing of exceptional circumstances to justify an interlocutory appeal under 28 U.S.C. § 158. This Court expects strict adherence to these basic tenets. Consequently, Appellants' motion for leave to appeal must be denied by the Court as procedurally deficient.

CONCLUSION

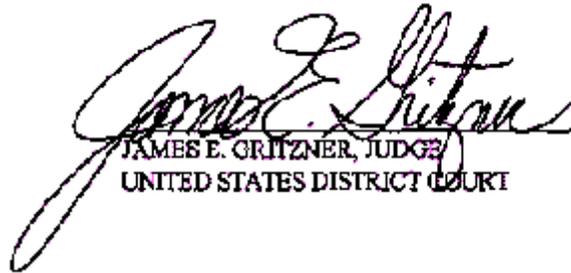
The Court finds that Appellants have failed to meet procedural requirements and fall short of the necessary showing for an interlocutory appeal. Consequently,

⁷ If this Court were to address the merits of the determination by the Bankruptcy Court on the motion to compel discovery, the Court would progress from the exceedingly deferential view that a trial court has broad discretion in managing discovery. See Fed. R. Civ. P. 37; Suntrust Bank v. Blue Water Fiber, L.P., 210 F.R.D. 196, 199 (E.D. Mich. 2002). As a result, the applicable standard of review in the present case would be for gross abuse of discretion. See Gagnon v. Sprint Corp., 284 F.3d 839, (8th Cir. 2002) (stating that a "court's refusal to compel discovery is reversed upon a showing of gross abuse of discretion") (citing Wilson v. Int'l Bus. Machines, Corp., 62 F.3d 237, 240 (8th Cir. 1995)); Duffy v. Wolle, 123 F.3d 1026, 1040 (8th Cir. 1997) (finding a denial of a motion to compel is reviewed for gross abuse of discretion). Appellants cite to the factors used by the Seventh Circuit in determining whether an abuse of discretion has occurred. These factors indicate that where (1) there is no support in the record upon which the court could have rationally bases its decision, (2) the decision is based upon an erroneous legal conclusion, (3) the decision is based on erroneous factual findings, or (4) the decision appears arbitrary, reversal is warranted under the abuse of discretion standard. Haworth, Inc. v. Herman Miller, Inc., 998 F.2d 975, 977 (Fed. Cir. 1998) (citations omitted). Even under the deferential standard, the Court has not been provided with an adequate record to assess the issue.

Appellants' motion for leave to appeal the bankruptcy court's denial of their motion to compel is hereby **denied**.

IT IS SO ORDERED.

Dated this 10th day of June, 2004.



JAMES E. GRITZNER, JUDGE
UNITED STATES DISTRICT COURT